

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 365 of 1994

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?
Nos. 1 to 5 - No.

HARSHADBA @ KANAKBA DILIPSINH

Versus

DILIPSINH B JADEJA

Appearance:

MR HD CHUDASAMA for Petitioner

MR KIRIT I PATEL for Respondent No. 1

MR.ST MEHTA,ADDL.PUBLIC PROSECUTOR for Respondent No. 2

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 17/02/97

ORAL JUDGEMENT

The petitioner preferred Criminal Misc.Application No.154 of 1989 for maintenance under section 125 of the Code before the learned Judicial Magistrate, First Class, Wankaner. She claimed that soon

after her marriage the respondent No.1 deserted her and that respondent No.1 was earning around Rs.1500/every month and owned a house and some agricultural lands. The learned Magistrate under his judgment and order dated 21-1-93, recorded a finding that the petitioner was being ill-treated and was deserted by respondent No.1. It was also found that the respondent No.1 had contracted another marriage and had also fathered a child. She, therefore, was entitled to maintenance under section 125 of the Code. Learned Magistrate further held that the respondent No.1 was driving his own Taxi and was earning Rs.1500/- every month. Considering the income of the respondent No.1, the learned Magistrate awarded a monthly maintenance of Rs.350/- to the petitioner.

Feeling aggrieved the respondent No.1 preferred Criminal Revision Application No.7 of 1993 before the learned Additional Sessions Judge, Morvi. Learned Additional Sessions Judge upheld the finding recorded by the learned Magistrate. He, however, held that the respondent No.1 was earning around Rs.1200/- every month and the monthly maintenance of Rs.350/- awarded to the petitioner was far excessive. He, therefore, under his judgment and order dated 30-3-94 reduced the amount of maintenance awarded to the petitioner to Rs.300/- per month. Feeling aggrieved the petitioner has preferred the present petition.

It has been found by both the courts below that the respondent No.1 was driving his own taxi. However, no proof of his income has been brought on the records of the matter. The learned Judge had, therefore, to depend upon the inference. The learned Magistrate believed that since the respondent No.1 was driving his own taxi, he should have been earning around Rs.1500/- every month. However, the learned Additional Sessions Judge took the view that the income of the respondent No.1 should be around Rs.1,000/- to Rs.1200/every month. He, therefore, proceeded further to reduce the amount of maintenance awarded to the petitioner. Since no proof of the income of the respondent No.1 has been brought on the records of the matter, the inference drawn by the learned Additional Sessions Judge as regards income of the respondent No.1 cannot be said to be erroneous. Considering this income if the amount of monthly maintenance of Rs.300/- is awarded to the petitioner the same does not call for an interference by this court exercising its revisional jurisdiction under section 397 of the Code. The inference drawn by the learned Additional Sessions Judge cannot be said to be either incorrect or unreasonable.

This application is, therefore, dismissed. Rule
is discharged.
